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HARLAN KELLY, JR.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HARLAN KELLY, JR.,

Defendant.

Case No.: 3:21-CR-00402-RS

**DEFENDANT HARLAN KELLY JR.'S
SUPPLEMENTAL DISCLSORE
PURSUANT TO FEDERAL RULE OF
CRIMINAL PROCEDURE 16(b)(1)(c)**

Judge: Hon. Richard Seeborg

1 Pursuant to Fed. R. Crim. P. 16(b)(1)(c), Defendant Harlan Kelly, Jr. makes the following
2 supplemental disclosure:

3
4 **I. CONSTRUCTION EXPERT ANTHONY FROYD**

5 In addition to expert Michael Conrad, who was disclosed yesterday and to whom the
6 Government did not object, Defendant Harlan discloses an additional retained construction
7 expert Anthony Froyd in order to substitute for the defense's prior expert, Barry White, who has
8 been hospitalized and indicated he is unable to testify.

9 Mr. Froyd is a California licensed general contractor with more than 30 years of
10 experience in the construction industry, including 14 of those years as a licensed general
11 contractor. During this time, he has managed residential products, including the construction of
12 7,700 single family homes in California. Since 2019, Mr. Froyd has worked as a construction
13 consulting and forensic analyst for Blackstone Development, Inc., a firm specializing in
14 contracts and field defect litigation. Prior to that, he spent 13 years as principal of a specialty
15 contracting firm, High End Development, Inc., in Benicia, California, where he managed all
16 phases of residential construction projects and handled project schedules, budgets, insurance
17 requirements, risk management, and quality control. He has testified in depositions and
18 arbitrations, but has not previously testified in Court.

19 Mr. Froyd's testimony will be based on his expert experience over the past 30 years
20 working in the construction industry in California. He has reviewed invoices sent by Walter
21 Wong to Harlan Kelly, and has spent several hours examining the work Mr. Wong did in the
22 Kelly home on July 6, 2023. Mr. Froyd expects to testify that: (1) the 27 percent markup that
23 Wong charged Kelly is high compared to the industry standard of 15 percent for similar work
24 that does not involve direct oversight of subcontractors; (2) the work that Mr. Wong performed
25 on the Kelly residence—including installation of prefabricated railings, a garage door, a
26 prefabricated fireplace mantel, and artificial turf in the back yard—was largely cosmetic and did
27 not require the number of labor hours for which Mr. Wong billed Mr. Kelly; and (3) the work
28 Mr. Wong billed Mr. Kelly for concerning water damage repairs was overpriced considering the

1 scope of the work and the labor that would have been required for such repairs. Mr. Froyd may
2 also testify regarding the ability of contractors and subcontractors to obtain mechanic's liens
3 under California law and local regulations and policies.

4 Additional information regarding the actual opinions Froyd will offer and the bases for
5 each opinion is outlined below:

6 **1. Expert Opinion on Wong Billing Practices**

7 Mr. Froyd will testify that Wong's practice of adding a 15 percent cost markup and a 12
8 percent profit markup (for a combined markup of 27 percent) is high compared to the industry
9 standard, which is closer to 15 percent. Mr. Froyd will testify that, given that his work mostly
10 consisted of purchasing items that were installed directly by the vendor, Mr. Wong's role was
11 more akin to a supply broker rather than a general contractor, and he was subject to far less risk
12 than a general contractor and did not directly manage or oversee the installation of the majority
13 of the items he purchased.

14 These opinions are based on Froyd's review of Invoice 14-10008 for \$89,807.80 from
15 Walter Wong, dated October 27, 2014. These opinions are also based on Froyd's career working
16 in residential construction, including overseeing home remodeling projects in the San Francisco
17 Bay Area, managing subcontractors, and handling the invoicing of clients. These opinions are
18 also based on Froyd viewing the work Wong did on the Kelly home during a visit on July 6,
19 2023.

20 **2. Expert Opinion on Scope of Work Wong Performed**

21 Froyd will testify that the scope of the work Wong did on the Kelly remodel project
22 largely consisted of hiring other vendors to install specific items. Froyd will testify that few of
23 the projects that Wong included on his invoice appeared to involve significant labor provided by
24 Wong, and that because many of the items that Wong billed as "materials" also included
25 installation provided by the vendor, Wong's true "materials" cost was far lower than the amount
26 he billed to Kelly. This includes an analysis of the purchases that Wong made for prefabricated
27 railings, the garage door, front steps, fireplace mantel, shower doors, tile, and artificial turf,
28 among other items.

1 These opinions are based on Froyd's review of Invoice 14-10008 for \$89,807.80 from
2 Walter Wong, dated October 27, 2014. These opinions are also based on Froyd's career working
3 in residential construction, including overseeing home remodeling projects in the San Francisco
4 Bay Area, managing subcontractors, and handling the invoicing of clients. These opinions are
5 also based on Froyd viewing the work Wong did on the Kelly home during a visit on July 6,
6 2023.

7 **3. Expert Opinion on Water Damage Repairs Conducted by Wong**

8 Froyd will testify that the amount Wong attempted to charge Kelly for repairing water
9 damage in 2018-2019 was overpriced. Specifically, Froyd will testify that the area where the
10 water leak originated was a relatively small light well on the top level, and as such, the total
11 amount for a repair should have cost no more than \$7,000 in labor and \$1,500-2,000 in materials.
12 Froyd's analysis will consider repair involving the subfloor, waterproof coating, finish product
13 (slate), siding and trim, flashing, paper product, and drywall.

14 These opinions are based on Froyd's review of invoices provided by Wong to Kelly in
15 2018-2019 concerning water damage repairs. They are also based on Froyd's experience
16 conducting repair of water damage in the San Francisco Bay Area. These opinions are also based
17 on Froyd viewing the work Wong did on the Kelly home during a visit on July 6, 2023.

18 **4. Opinions Regarding Mechanic's Liens**

19 As a California licensed general contractor for the past 14 years, Froyd will testify about
20 the ways members of the construction trades utilize mechanic's liens in relation to residential
21 remodel projects. His testimony will be based on his professional understanding of the ability for
22 both general contractors and subcontractors to file liens on particular projects, as well as the time
23 limitations concerning liens.

24 This opinion is based on Froyd's 14 years of experience as a general contractor, including
25 his experience managing subcontractors and overseeing large residential and commercial
26 projects.
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